

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Date Purchased:

FILED
U.S. DISTRICT COURT
2008 MAR 17 P 2:48
S.D. OF N.Y. W.P.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY
a/s/o YVONNE PARKER,

Plaintiffs,

COMPLAINT

- against -

UNITED STATES OF AMERICA,

Defendant.

08 CIV. 2799

JUDGE ROBINSON

Plaintiff, State Farm Mutual Automobile Insurance Company, as subrogee of Yvonne Parker, by and through its attorneys, Friedman, Hirschen & Miller, LLP, as and for its complaint against the defendant, United States of America, alleges as follows, upon its information and belief:

1. At all times herein mentioned, plaintiff, State Farm Mutual Automobile Insurance Company, was and still is a citizen of the state of Illinois, where it is incorporated and where it has its principal place of business. Plaintiff is a citizen of Illinois pursuant to 28 USC Sec. 1332©
2. Plaintiff was and still is authorized to conduct an insurance business in the State of New York.
3. Defendant is the United States of America. Pursuant to 28 USC Sec 1333, jurisdiction of an action against the United States of America is exclusive in federal court.
4. On October 22, 2006, and at the time of the incident set forth herein, defendant, the United States, through its subdivision, The Department of Labor, owned a 2005 Chevrolet passenger automobile, bearing License Plate No. CZR2754, issued by the State of New York.
5. Said vehicle owned by defendant was operated by its employee, Stephen M. Donnelly, with the permission and consent of said owner, and in the regular course of business of defendant.
6. Prior to October 22, 2006, plaintiff issued a policy of automobile property insurance insuring a certain 2004 Mercedes Benz owned by Yvonne Parker, and bearing New York State License Plate No. CTU5622 and Vehicle Identification No. WDBUF65J14A3016.
7. On Sunday, October 22, 2006, at approximately 7:00 p.m., said vehicle insured by plaintiff, and operated by Allan Vernon, with the permission and consent of said owner, was traveling the Hutchinson River Parkway in the Town of Pelham Manor, New York, approximately 15' north of its intersection with Boston Post Road.

8. Said vehicle owned by defendant and operated by Stephen M. Donnelly was also driving on the Hutchinson River Parkway in said vicinity, when the vehicle owned by defendant struck the vehicle insured by plaintiff while the vehicle owned by defendant was in the course of switching lanes from the left lane to the right lane.

9. Said incident was caused wholly by negligence on the part of defendant, through its employee, agent and/or driver, in changing lanes in an unsafe manner and without warning.

10. Said negligence on the part of defendant caused damage to the vehicle insured by plaintiff.

11. As a result, plaintiff paid, to and for the benefit of its insured, the sum of \$1,944.74.

12. On January 19, 2007, a claim was duly filed against the United States of America, pursuant to 28 CFR14.2. Attached hereto and marked Exhibit "A" is a copy of said claim.

13. Defendant has failed to respond to the claim filed by plaintiff, necessitating this suit.

WHEREFORE, plaintiff seeks judgment over and against defendant, United States of America, for the sum of \$1,944.74, together with the interests and costs and disbursements of this action.

Dated: February 6, 2008

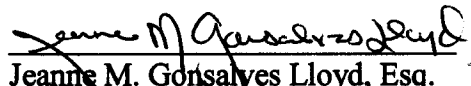

Jeanne M. Gonsalves Lloyd, Esq. JG 9156
Friedman, Hirschen & Miller LLP
Attorneys for Plaintiffs
100 Great Oaks Boulevard., Suite 124
P.O. Box 38279
Albany, NY 12204
518-377-2225

EXHIBIT A

CLAIM FOR DAMAGE, INJURY, OR DEATH		<small>INSTRUCTIONS: Please read carefully the instructions on page 2 and supply information requested on pages 1 and 2 of this form. Use additional sheet (s) if necessary. See page 2 for additional instructions.</small>		<small>FORM APPROVED OMB NO. 1105-0006 EXPIRES 4-30-88</small>	
1. Submit To Appropriate Federal Agency: U S Department of Labor 20 Varick Street New York, NY 10014			2. Name, Address of claimant and claimant's personal representative, if any. <small>(See instructions on page 2.) (Number, street, city, State and Zip Code)</small> State Farm Insurance as subrogee of Yvonne Parker Tax ID 370533100 P O Box 2371 Bloomington, IL 61702-2371		
3. TYPE OF EMPLOYMENT <input type="checkbox"/> MILITARY <input checked="" type="checkbox"/> CIVILIAN	4. DATE OF BIRTH n/a	5. MARITAL STATUS n/a	6. DATE AND DAY OF ACCIDENT 10-22-06 Sunday		7. TIME (A.M. OR P.M.) 7:00 pm
8. Basis of Claim (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof.) (Use additional pages if necessary.) Vehicle #1 (Parker) was traveling on Hutchinson Parkway in Pelham, NY, in the right lane. Vehicle #2 (U S Dept of Labor vehicle, driven by Stephen Donnelly) attempted to switch from the left lane to the right lane and hit Vehicle #1 <div style="text-align: center; font-size: 1.5em; margin-top: 20px;">52-8122-951</div>					
9. PROPERTY DAMAGE					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, street, city, State, and Zip Code) same					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF DAMAGE AND THE LOCATION WHERE PROPERTY MAY BE INSPECTED. (See instructions on page 2) 2004 Mercedes E320 sustained damage to the driver's side, front to rear.					
10. PERSONAL INJURY/WRONGFUL DEATH					
STATE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE NAME OF INJURED PERSON OR DECEDENT. none					
11. WITNESSES					
NAME			ADDRESS (Number, street, city, State, and Zip Code)		
none			n/a		
12. (See instructions on page 2) AMOUNT OF CLAIM (in dollars)					
12a. PROPERTY DAMAGE \$1,944.74	12b. PERSONAL INJURY none	12c. WRONGFUL DEATH none	12d. TOTAL (Failure to specify may cause forfeiture of your rights.) \$1,944.74		
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE ACCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM					
13a. SIGNATURE OF CLAIMANT (See instructions on page 2.)			13b. Phone number of signatory 877-457-8276	14. DATE OF CLAIM 01-19-07	
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM <small>The claimant shall forfeit and pay to the United States the sum of \$2,000, plus double the amount of damages sustained by the United States. (See 31 U.S.C. 3729.)</small>			CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS <small>Fine of not more than \$10,000 or imprisonment for not more than 5 years or both. (See 18 U.S.C. 287, 1001.)</small>		

15-107
Previous editions not usable.

STANDARD FORM 95 (Rev. 7-85)
PRESCRIBED BY DEPT. OF JUSTICE
28 CFR 14.2

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. Authority: The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

- B. Principal Purpose: The information requested is to be used in evaluating claims.
 C. Routine Use: See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.
 D. Effect of Failure to Respond: Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid".

INSTRUCTIONS

Complete all items - insert the word NONE where applicable

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY DAMAGES IN A SUM CERTAIN, FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN TWO YEARS AFTER THE CLAIM ACCRUES.

Any instructions of information necessary in the preparation of your claim will be furnished, upon request, by the office indicated in item #1 on page 1. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplemental regulations also. If more than one agency is involved, please state each agency.

The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with said claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file claim for both personal injury and property damage, claim for both must be shown in item 12 of this form.

The amount claimed should be substantiated by competent evidence as follows:

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

(b) In support of claims for damage to property which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) Failure to completely execute this form or to supply the requested material within two years from the date the allegations accrued may render your claim "invalid". A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

Failure to specify a sum certain will result in invalid presentation of your claim, and may result in forfeiture of your rights.

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of his vehicle or property.

15. Do you carry accident insurance? ☒ Yes. If yes, give name and address of insurance company (Number, street, city, State, and Zip Code) and policy number. ☐ No.

State Farm Insurance

P O Box 2371

Bloomington, IL 61702-2371 Claim #52-8122-951 Policy #0230-501-52C

16. Have you filed claim on your insurance carrier in this instance, and if so, is it full coverage or deductible?

State Farm has paid property damage & rental, less deductible

17. If deductible, state amount

\$500.00

18. If claim has been filed with your carrier, what action has your insurer taken or propose to take with reference to your claim? (It is necessary that you ascertain these facts)

State Farm is subrogating. State Farm will also pay our insured's \$500.00 deductible with recovery received.

19. Do you carry public liability and property damage insurance?

☒ Yes. If yes, give name and address of insurance carrier (Number, street, city, State, and Zip Code)

☐ No.

State Farm Insurance

P O Box 2371

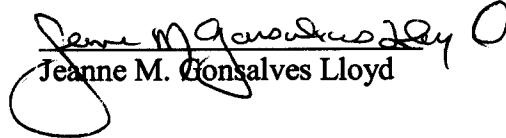
Bloomington, IL 61702-2371

STATE OF NEW YORK)

: ss.

COUNTY OF ALBANY)

JEANNE M. GONSALVES LLOYD, ESQ., being duly sworn, deposes and says: I am an attorney at law and a member of the firm of Friedman, Hirschen & Miller, LLP, attorneys for the plaintiff in the above-entitled action. I have read the foregoing Summons and Complaint and know the contents thereof and the same is true of my own knowledge except as to the matters therein alleged to be upon information and belief, and as to those matters I believe it to be true.


Jeanne M. Gonsalves Lloyd

Sworn to before me this
6th day of February, 2008


Notary Public

My commission expires:

CAROLYN B. GEORGE
NOTARY PUBLIC, State of New York
No. 2GE4993316
Qualified in Albany County
Commission Expires March 16, 2010

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE FARM MUTUAL AUTOMOBILE

INSURANCE COMPANY a/s/o YVONNE PARKER

(In the space above enter the full name(s) of the plaintiff(s).)

COMPLAINT

-against-

UNITED STATES OF AMERICA

Jury Trial: ☒ Yes ☐ No
(check one)

(In the space above enter the full name(s) of the defendant(s). If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identical to those contained in Part I. Addresses should not be included here.)

I. Parties in this complaint:

- A. List your name, address and telephone number. If you are presently in custody, include your identification number and the name and address of your current place of confinement. Do the same for any additional plaintiffs named. Attach additional sheets of paper as necessary.

Plaintiff Name Loretta Russo - Nicolini, Paridise for State Farm
Street Address 114 Old Country Road - Ste 500, P.O. Box 9006
County, City Mineola
State & Zip Code New York 11501-9006
Telephone Number (516) 741-6355

- B. List all defendants. You should state the full name of the defendant, even if that defendant is a government agency, an organization, a corporation, or an individual. Include the address where each defendant may be served. Make sure that the defendant(s) listed below are identical to those contained in the above caption. Attach additional sheets of paper as necessary.

Defendant No. 1 Name John Dolce - U.S. Dept. of Labor
 Street Address 20 Varick Street
 County, City New York
 State & Zip Code New York 10014
 Telephone Number 917-642-8306

Defendant No. 2 Name _____
 Street Address _____
 County, City _____
 State & Zip Code _____
 Telephone Number _____

Defendant No. 3 Name _____
 Street Address _____
 County, City _____
 State & Zip Code _____
 Telephone Number _____

Defendant No. 4 Name _____
 Street Address _____
 County, City _____
 State & Zip Code _____
 Telephone Number _____

II. Basis for Jurisdiction:

Federal courts are courts of limited jurisdiction. Only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case involving the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one state sues a citizen of another state and the amount in damages is more than \$75,000 is a diversity of citizenship case.

A. What is the basis for federal court jurisdiction? (*check all that apply*)

☒ Federal Questions

☐ Diversity of Citizenship

B. If the basis for jurisdiction is Federal Question, what federal Constitutional, statutory or treaty right is at issue? Federal tort claim against United States of America 28 USC 1333 - Federal Court jurisdiction is exclusive.

C. If the basis for jurisdiction is Diversity of Citizenship, what is the state of citizenship of each party?

Plaintiff(s) state(s) of citizenship _____

Defendant(s) state(s) of citizenship _____

III. Statement of Claim:

State as briefly as possible the facts of your case. Describe how each of the defendants named in the caption of this complaint is involved in this action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach additional sheets of paper as necessary.

A. Where did the events giving rise to your claim(s) occur? Town of Pelham Manor, NY - Hutchison River Parkway southbound.

B. What date and approximate time did the events giving rise to your claim(s) occur? Sunday, October 22, 2006 - 7:00 p.m.

C. Facts: 2004 Mercedes Benz insured by plaintiff was struck by 2005 Chevrolet owned by U.S. Dept. of Labor and operated by U.S.A. employee.

What happened to you?

Who did what?

Was anyone else involved?

Who else saw what happened?

IV. Injuries:

If you sustained injuries related to the events alleged above, describe them and state what medical treatment, if any, you required and received. _____

Property damage paid in an amount of \$1,944.74.

V. Relief:

State what you want the Court to do for you and the amount of monetary compensation, if any, you are seeking, and the basis for such compensation.

Determine defendant was negligent and award full recovery of damages paid by plaintiff.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 6th day of February, 2008.

Signature of Plaintiff

[Signature] JA9156

Mailing Address

Friedman, Hirshen & Miller, LLP
100 Great Oaks Blvd., Suite 124

P.O. Box 38279, Albany, NY 12203

Telephone Number

(518) 377-2225

Fax Number (if you have one)

(518) 377-2247

Note: All plaintiffs named in the caption of the complaint must date and sign the complaint. Prisoners must also provide their inmate numbers, present place of confinement, and address.

For Prisoners:

I declare under penalty of perjury that on this _____ day of _____, 20____, I am delivering this complaint to prison authorities to be mailed to the *Pro Se* Office of the United States District Court for the Southern District of New York.

Signature of Plaintiff: _____

Inmate Number _____